

**REMARKS**

Claims 1-2 and 4-15 and 20 are pending in the application. Claim 1 was amended to recite that the foam material comprises a distribution of pore sizes between 0 and 3  $\mu\text{m}$ . No new matter was added.

**IDS**

The Examiner is reminded that an Information Disclosure Statement was filed in the application on June 2, 2004. A copy of the Information Disclosure Statement and a postcard receipt thereof are attached. The Examiner is respectfully requested to consider the Information Disclosure Statement and return an initialed copy of the PTO-1449 to applicants' attorney.

**Rejection under 35 U.S.C. § 102(e)/103(a)**

Claims 1-2 and 4-15 and 20 were rejected under 35 U.S.C. § 102(e) as anticipated by, or in the alternative, under 35 U.S.C. § 103(a) as obvious over *Chen et al.*, U.S. Patent No. 6,261,679. Applicants respectfully traverse this rejection.

The rejected claims are directed to liquid absorbent materials comprising an open-cell polymeric foam material comprising either polysaccharide or polypeptide, the foam material having an absorption rate at wetting of at least 0.4 ml/s for a round sample having a 50 mm diameter, a liquid distribution capacity at an inclination of 30° of at least 15 g/g, and a liquid storage capacity of at least 9% measured through centrifuge retention capacity, for synthetic urine test liquid. Each of the claims further include data concerning the pore sizes.

*Chen et al.* does not anticipate or make obvious the presently claimed invention. The Examiner asserts that "since the open-cell fibrous absorbent structure of Chen is substantially made by the same material (polysaccharides or polypeptides), and by substantially the same process (freeze drying), the instantly claimed absorbent properties, such as CRC, is believed to be either anticipated by Chen, or an obvious optimization to one skilled in the art, motivated by the desire to obtain the required amount of absorbent properties." Office Action at pg 3. However, the claimed material and the *Chen et al.* material are not substantially identical and the claimed material is not an obvious optimization of the *Chen et al.* material.

Applicants respectfully request the Examiner to reconsider Kent Malmgren's Declaration Under 37 C.F.R. § 1.132. With respect to Mr. Malmgren's statement that "[a] fibrous network of the kind shown in Chen et al., for example in Figure 2, will have a considerably lower CRC value than claimed since Chen et al. does not disclose that a part of the cells of the fiber structure described would have a size small enough to give a liquid storage capacity as claimed," the Examiner asserts that applicants fail to provide any evidentiary support or comparative study results. In essence, the Examiner has treated Mr. Malmgren's declaration as non-probative opinion. Mr. Malmgren's declaration is not a mere conclusory opinion that the material taught by *Chen et al.* does not possess the claimed liquid storage capacity.

Mr. Malmgren is an expert skilled in the art of absorbent polymeric foam materials. Mr. Malmgren discusses the relevant **facts** he used to come to his conclusion as an expert. He discusses the **fact** that in *Chen et al.* "the cells defined by the foamable binder may have a diameter from about 0.02 mm to about 0.2 mm (20 to 200  $\mu\text{m}$ )." Malmgren Declaration, paragraph 7 (citing *Chen et al.*, Column 41, line 55 through Column 42, line 38). Further, he discusses the **fact** that "the CRC method mainly measures the so-called "gel-liquid", which is liquid that is firmly bound in pores smaller than 3  $\mu\text{m}$ ." Malmgren Declaration, paragraph 8. Based on these **facts**, Mr. Malmgren offers his conclusion as an expert that "[t]he pore size of the material disclosed in Chen et al. would not provide the claimed liquid storage capacity as there is no description of the material in Chen et al. having pores of a size in which gel liquid would be bound such that the claimed liquid storage capacity may be achieved." Malmgren Declaration, paragraph 8. Mr. Malmgren is not offering an opinion on the ultimate legal conclusion. Rather, Mr. Malmgren is an expert who made a conclusion based on **scientific facts**. As such, the Examiner cannot disregard Mr. Malmgren's declaration as lacking probative value.

Thus, accepting Mr. Malmgren's conclusion based on **scientific facts**, the claimed material and the *Chen et al.* material are not substantially identical. Moreover, applicants note that newly amended independent claim 1 and previously present claim independent claims 13 and 15 have a **structural limitation** such that the foam material must have a distribution of pore sizes between 0 and 3  $\mu\text{m}$ . This highlights the difference in the claimed material and the *Chen et al.* material.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). As set forth above, *Chen et al.* does not disclose each and every element as defined in the rejected claims, lacking at least the liquid storage capacity as defined. In view thereof, Applicants respectfully request that the rejection of the claims as anticipated be withdrawn.

Additionally, *Chen et al.* would not have made the invention as defined in the rejected claims obvious since there is no motivation or suggestion provided to prepare a material with cells or pores small enough to provide the liquid storage capacity as claimed. That is, *Chen et al.* do not recognize or suggest that the small pore size provides for gel liquid, which is firmly bound and allows for the high liquid storage capacity. In view thereof, Applicants respectfully request that the rejection of the claims under 35 U.S.C. § 103(a) be withdrawn.

Applicants believe all matters raised in the above referenced Office Action have been responded to and that the application is now in condition for allowance. Should the Examiner have any questions regarding this Amendment, or regarding the application in general, the Examiner is invited to contact the undersigned at the number listed below in order to expedite prosecution of the application.

Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, LLP

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By: T-D, Boone  
Travis D. Boone  
Registration No. 52,635

P.O. Box 1404  
Alexandria, Virginia 22313-1404  
(703) 836-6620